much weaker one, that the dismissed officer has not had a fair trial. But if evidence is given showing that the right was waived, or if not waived, that no injustice in fact resulted, it seems clear that the presumption is rebutted. To adopt any other rule tending to make proceedings of this sort rigid or technical, is to give to them the character of a trial at law, which is as little the true interpretation as to allow, on the other hand, the proceedings to become mere formalities gone through by a removing power exercising in reality the right of arbitrary dismissal.

CONTROL OF NAVIGABLE WATERS.—At common law, the ownership of the beds of tidal waters was regarded as *jus privatum,* vested in the crown; but the right to use and control both the submerged land and the water was deemed *jus publicum,* vested in Parliament in trust for the public for the purposes of navigation and fishing. Subject to this parliamentary control, the crown could convey the soil under water to private individuals.[1] In this country, upon admission to the Union, the State succeeds to both the *jus privatum* of the crown and the *jus publicum* of Parliament, and title to the beds not only of tidal waters, but also of navigable inland waters, passes either to the State or the riparian owner.[2] Thus the State, in its capacity as successor to the crown, may grant submerged soil which may not be used, however, to impair the public right of navigation and fishing which in its capacity as successor to Parliament, it holds in trust for the people.[3]

The States have plenary authority over navigation, subject, however, to the supreme and paramount control thereof vested in Congress under the Commerce Clause.[4] Under this provision Congress may authorize the improvement[5] and obstruction[6] of navigable streams, and is the sole judge of the necessity and reasonableness of

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[1] 1 Farnham, Waters & Water Rights, 165-172.

[2] In Pollard's Lessee *v.* Hagan (1845) 3 How. 212, it was declared that the title to the soil of navigable waters passed to the State upon admission to the Union. The waters in question were tidal, and as at that time the admiralty jurisdiction of the United States was held to apply only to tidal waters, the decision must be limited to its facts. The case of Genesee Chief *v.* Fitzhugh (1851) 12 How. 443, decided that the admiralty jurisdiction of the United States extended to all navigable waters, and as a result, the ownership of soil under all such waters vested either in the State or in the riparian owners depending on the local law. St. Anthony etc. Co. v. St. Paul Water Commissioners (1897) 168 U. S. 349; see United States *v.* Chandler-Dunbar Water Power Co. (1913) 229 U. S. 53. See 13 Columbia Law Rev. 531 *et seq.,* for a discussion of the various views relating to the ownership of the bed of a navigable stream.

[3] Parliament is, of course, bound by no constitutional restrictions, and may act as it sees fit in governmental matters, 1 Farnham, Waters & Water Rights, 170, whereas the State may act solely with reference to the powers reserved to it by virtue of the Constitution.

[4] U. S. Const., Art. 1, § 8, subd. 3. Gibbons *v.* Ogden (1824) 9 Wheat. 1, 189 *et seq.*

[5] Gibson *v.* United States (1897) 166 U. S. 269. When Congress has authorized an improvement, an act under the authority of a State in derogation of Congress' action, will be enjoined. United States *v.* Rum River etc. (C. C. 1870) 1 McCrary 397.

[6] Miller *v.* Mayor of New York (1883) 109 U. S. 385; South Carolina *v.* Georgia (1876) 93 U. S. 4.

such legislation.[7] Where Congress has acted, the States may not act;[8] but in the absence of federal legislation on the subject, a State may authorize the obstruction of navigation,[9] if, in the administration of its public trust, the legislature deems it to be for the public benefit, for inasmuch as the trust is for the advantage of the public, it should be administered in a liberal manner by balancing the rights of the community to use navigable waters with the ultimate benefit secured to it by reason of the obstruction. A State, therefore, may grant full control of the soil under navigable waters for the purpose of improving navigation, giving to the grantee the right to exact tolls for the use of the stream until fully compensated.[10] But such a situation differs essentially from one where the State grants the title to, and complete control over, land under navigable waters to a private company to be used for a purpose which only remotely, and in a slight degree, benefits the public. In such a case, the State, in violation of the public trust, divests itself of its right to improve the stream, and it "can no more abdicate its trust over property in which the whole people are interested, like navigable waters and soils under them, * * * than it can abdicate its police powers in the administration of government and the preservation of peace."[11]

In the recent case of *Long Sault Development Co.* v. *Kennedy* (1914) 212 N. Y. 1, the question arose as to the validity of a grant of land under the St. Lawrence River to a corporation for the purpose of using the water to develop electric energy, with the right to erect locks, dams, and bridges, to further the enterprise, on condition that "navigation shall be preserved in as good condition as, if not better than," at the time of the grant. The grant was further conditioned on congressional authorization of the undertaking. It was held that the grant gave the corporation full control of the river to the exclusion of the State, which lost its right to improve the navigation at any time, and as such, was void as a violation of the public trust hereinbefore discussed.[12] Collin, J., dissented on two grounds. In the first place, he declared that the grant did not vest complete control of the river in the corporation. Secondly, assuming that it did, the development of electric energy being of benefit to the community, the legislature, in the administration of its public trust, could balance conveniences and authorize obstructions to navigation where public interest required. There is doubtless a distinction between a case where

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[7]Gibbons *v.* Ogden, *supra*, p. 196.

[8]Gibbons *v.* Ogden, *supra*, p. 209 *et seq.*

[9]Willson *v.* Black Bird Creek Marsh Co. (1829) 2 Pet. 245; Escanaba Co. *v.* Chicago (1882) 107 U. S. 678. Congress may remove an obstruction to navigation authorized by a State, Hannibal Bridge Co. *v.* United States (1911) 221 U. S. 194, even though at the time the obstruction was erected Congress had not acted. Union Bridge Co. *v.* United States (1907) 204 U. S. 364. The question whether a navigable stream running through two States may be obstructed by one of the States in the absence of congressional legislation on the subject, is unsettled. See Rhea *v.* Newport, N. & M. V. R. R. (C. C. 1892) 50 Fed. 16; but see Palmer *v.* Commissioners of Cuyahoga County (C. C. 1843) 3 McLean 226.

[10]Wisconsin etc. Co. *v.* Manson (1877) 43 Wis. 255.

[11]Illinois Central R. R. *v.* Illinois (1892) 146 U. S. 387, 453.

[12]The statute in the principal case was repealed before the question came before the Court of Appeals, a fact which may have had some influence on the court's decision.

an obstruction to navigation is authorized, the State, nevertheless, retaining control over the river, and one where the State completely divests itself of control over the navigation of a stream. On the facts of the principal case, however, the dissenting view seems preferable, as the grant might reasonably have been construed to reserve to the State the right to enter and improve the stream whenever it should see fit, for the presumption that such a right is reserved seems sufficiently strong to warrant the courts to require overwhelming proof of its abandonment.

ASSIGNABILITY OF CONTRACTS.—It was the rule of the ancient common law that a chose in action could not be alienated or assigned except by the king or to him, and for the reason that a chose in action presupposes a personal relation which cannot be transferred.[1] But this hard and fast rule was soon avoided by the device of a power of attorney, allowing the grantee of the power to use the grantor's name in a suit at law on the obligation.[2] If after the assignment so effected the assignor will not allow the suit in his name, or if, after notice, the obligor and the assignor have colluded in derogation of the assignee's rights at law, the assignee may bring a bill in equity to enforce his rights.[3] Not a few jurisdictions have adopted statutes allowing the assignee, as the real party in interest, to sue at law in his own name;[4] but such a statute works no change in the fundamental rights of the parties, and involves merely a change of procedure.[5]

If, therefore, one of the contracting parties possesses a contract right to demand some obligation from the other, and if such right is unattended by a reciprocal duty or obligation, there is no difficulty in giving full effect to an assignment of it, as of a mere chose in action.[6] When, however, rights arising from executory contracts are coupled with obligations, no such sweeping doctrine as to their assignability is applicable. Executory contracts are held to be not assignable when they impose upon him who attempts to assign a relation of trust

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[1]See essay by J. B. Ames on the Inalienability of Choses in Action, Ames' Lectures on Legal History, 210, which declares unsound the view that the rule rests on an aversion to maintenance. See Lampet's Case (1613) 10 Co. *46a; 2 Bl., Comm., *442.

[2]2 Bl., Comm., *442; see Glenn *v.* Marbury (1892) 145 U. S. 499. From this it follows that the assignee can have no better claim than his assignor. Any payment to the assignor, moreover, before notice of the assignment is given the obligor, is binding as against the assignee. Pollock, Contracts (8th ed.) 499.

[3]See Hayward *v.* Andrews (1882) 106 U. S. 672; Hammond *v.* Messenger (1838) 9 Simon *327. Since assignment proceeds on the theory of agency, any satisfaction rendered the assignor, being a satisfaction of the principal, constitutes a valid defense in a suit at law by the assignee, the agent.

[4]New York Code of Civil Procedure, § 449; California Code of Civil Procedure, § 367; Burn's Annotated Indiana Statutes, § 251.

[5]Glenn *v.* Busey (D. C. 1886) 5 Mack. 233. In this country where law and equity are administered by the same courts, a court of law will take cognizance of equitable grounds of relief in favor of the assignee. Welch *v.* Mandeville (1816) 1 Wheat. 233.

[6]Pollock, Contracts (8th ed.) 499.